IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3187 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAYANTILAL NATHALAL KABARIYA

Versus

COLLECTOR

Appearance:

1. Special Civil Application No. 3187 of 2005
MR RAJESH R DEWAL for Petitioner No. 1-2
GOVERNMENT PLEADER for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 13/04/2005

ORAL JUDGEMENT

Rule. Shri Dipen Desai, learned A.G.P., waives service of rule on behalf of the respondent. With the consent of parties, the matter is taken up for final hearing today.

2. In this petition under Article 226 of the Constitution of India the petitioner has prayed for an appropriate writ and / or orders directing the respondents to make necessary correction by correcting the date of marriage, as well as, the date of birth of the petitioner No.2 in the Memorandum of Marriage as well as in the Register of Marriage maintained under the Bombay Registration of Marriage Act, 1953.

3. Shri Rajesh R. Dewal, learned Advocate appearing on behalf of the petitioner has submitted that the petitioners are the husband and wife and as they wanted to go abroad they have got their marriage registered in the Registrar of Marriage maintained under the aforesaid Act of 1958. On 18th March, 2000 necessary applications were made and got their marriage registered and Memorandum of Marriage came to be issued. It is submitted that through oversight and by mistake the date of marriage of the petitioner is mentioned as 1/3/1965 instead of 1/3/1964 and date of birth of the petitioner No.2 is 15/4/1952 and accordingly her age would be 58 years instead of that by mistake the age of the petitioner No.2 is mentioned as 62 years and therefore, the petitioners moved an appropriate applications and also affidavits and said applications are at Annexure - D and E of the present S.C.A. It is the case of the petitioners that as there is no specific Provision in the Act i.e. Bombay Registration of Marriage Act, 1953 with regard to any correction which can be made in the Memorandum of Marriage, the respondents have refused to make necessary correction in the Register of Marriage as well as Memorandum of Marriage and therefore, the petitioners have preferred the present Special Civil Application under Article 226 of the Constitution of India.

Shri Rajesh R. Dewal, learned Advocate appearing on behalf of the petitioners has relied upon the decisions of this Court in the case of Dr.Sukumar Mehta Vs. District Registrar, Births & Deaths., reported in 34 (1) G.L.R. 93 and the decision in the case of Dipika Arvindkumar Pancholi Vs. State of Gujarat and Anr., reported in 23(1) G.L.H.514 and has submitted that dealing with the case under the Registration of Birth and Deaths Act, 1969 and the dispute with regard to making necessary correction in the Register in absence of any specific power and / or Provision has submitted that this Court has taken a view that in such type of cases even Section 21 of the General Clauses Act can be made applicable and necessary corrections can be made by the concerned Authority. It is further held that the

authority who has got the power to make necessary entry, the very authority considering the Section 21 of the General Clauses Act has power to make necessary correction also. Under the circumstances, it is requested to allow the present Special Civil Application.

4. Shri Dipen Desai, learned A.G.P. has submitted that, as such there is no mistake on the part of the authority in making necessary entry in the Register and or making necessary entry while issuing the Memorandum of Marriage. The certificate is issued on the basis of the particulars given by the petitioners. It is further submitted that under the Provision of Bombay Registration of Marriage Act, 1953, there is no specific Provision with regard to correction in the Register of Marriage and / or Memorandum of Marriage once necessary entry is made and therefore, the authority has refused to make necessary correction and therefore, it is requested to dismiss the present S.C.A.

5. It is true that necessary entry was made in the Register of Marriage under the aforesaid Act and in the Memorandum of Marriage as per the particulars given by the petitioners. It is also true that there is no mistake on the part of the respondent authorities. However, under the Provisions of the Registrar of Marriage, the Registrar of Marriage is empowered to make necessary entry in the Register of Marriage and is empowered to issue Memorandum of Marriage. Considering the judgement of this Courts in the case of Dr.Sukumar Mehta (supra) and Dipika Arvindkumar Pancholi (supra). In such type of cases where there is no specific Provision considering the Provision of Section 20 of the General Clauses Act, the very Authority who has authority to make entry, has jurisdiction to make necessary correction also. Under the circumstances, considering the ratio laid down by the aforesaid two judgements, the concerned respondents are directed to make necessary correction in the Register of Marriage maintained under the Bombay Registration Act, 1953. So far as the petitioner No.2 is concerned and accordingly to issue the amended Memorandum of Marriage with the necessary correction after making necessary inquiry and verifications and considering the evidence, as well as, affidavits that may be produced before him. Such an exercise is required to be done by the concerned respondents, as early as possible, preferably within a period of 6 weeks from the date of receipt of this order. In view of the fact that because of the mistake committed on the part of the petitioners the respondents have to make necessary correction and therefore, the petitioners

are directed to pay an amount of Rs.5000/- towards the cost of respondent which is directed to deposit with the respondent No.2 alongwith certified copy of this Order.

Rule is made absolute to the aforesaid extent.
Direct Service is permitted.

(M.R.SHAH, J.)
sompura